matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756–1205.

Dated: April 27, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–11892 Filed 5–2–84; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Reduced Observables will meet on May 24 and 25, 1984, at the Office of Naval Research, 800 No. Quincy Street, Room 915, Arlington, Virginia. Sessions of the meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on May 24, 1984; and commence at 9:00 a.m. and terminate at 5:00 p.m. on May 25, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to receive technical briefings on passive sensor technology, remote sensor capabilities, low probability of intercept development and bi-static/multi-static sensor systems. In addition, the panel members will review material presented at previous meetings and discuss future briefings to be received by the Panel. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: April 27, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–11893 Filed 5–2–84; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Man-in-the-Loop Targeting will meet on May 22 and 23, 1984, at the Applied Physics Laboratory, Johns Hopkins University, Laurel, Maryland. Sessions of the meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. both days. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review material and presentations previously received by the Panel and to conduct a working session to draft the final report. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: April 27, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–11891 Filed 5–2–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S–EU–802, for 0.025 grams of plutonium–244, for use as standard reference material at the Transurane Institute EURATOM, in the Federal Republic of Germany.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: April 27, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84–11899 Filed 5–2–84; 8:45 am]

BILLING CODE 6450–01–M

Floodplain and Wetland Involvement Notification for Remedial Action at the Shiprock Inactive Uranium Mill Tailings Site, Shiprock, New Mexico

AGENCY: Department of Energy.

ACTION: Notice of Floodplain and Wetland Involvement.

SUMMARY: The Department of Energy (DOE) proposes to conduct remedial actions involving the stabilization and control of uranium mill tailings at a site in Shiprock, New Mexico. Remedial actions must comply with the standards promulgated by the Environmental Protection Agency (40 CFR Part 192) as required by the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95–604). Remedial action would involve the removal of contaminated soils and vegetation from the floodplain/wetland area along the San Juan River.

In accordance with DOE regulations for compliance with floodplain/wetland environmental review requirements (10 CFR Part 1022), DOE will prepare a floodplain and wetland assessment, to be incorporated in the environmental assessment of this proposed action. Maps and further information are available from DOE at the address shown below.

DATE: Any comments are due on or before May 18, 1984.

ADDRESS: Send comments to: Robert J. Stern, Director, Office of Environmental Compliance, PE–25, Office of the Assistant Secretary for Policy, Safety, and Environment, Room 4G–085 Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585.

Issued at Washington, D.C., April 25, 1984.

Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 84–11970 Filed 5–2–84; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed; Week of March 9 Through March 16, 1984

During the Week of March 9 through March 16, 1984, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: April 26, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 9 through Mar. 16, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 8, 1984	Oasis Petroleum Corp., Washington, D.C.	HCX–0100	Supplemental order. If granted: The April 11, 1980 Decision and Order (Case No. BSG–0015) issued to Oasis Petroleum Corporation by the Office of Hearings and Appeals would be modified in connection with the February 9, 1984 Court Order issued by the United States District Court for Northern District of Texas.
Mar. 14, 1984	Petrade International, Inc., Washington D.C.	HRH–0208 and HRD–0208.	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Petrade International, Inc., in response to the Proposed Remedial Order (Case No. HRO–0208) issued to Petrade International, Inc.
Mar. 16, 1984	Bill Ray Jones, Jackson, Miss.	HRH–0206 and HRD–0206.	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Transco Trading Company et al. in response to December 20, 1982, Proposed Remedial Order (Case No. HRO–0114) issued to in Transco Trading Company and Refiners and Producers Marketing, Inc.

REFUND APPLICATIONS RECEIVED

[Week of Mar. 9 to Mar. 16, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No. assigned
Mar. 12, 1984	Amoco/Virginia	RQ21–67.
Mar. 14, 1984	Amoco/Sault Ste. Marie Tribe of Chippewa Indians	RQ21–70.
Mar. 16, 1984	Amoco/Ramsey Oil Co.	RF21–12291
Do	Belridge/Missouri Amoco/Missouri	RQ8–71, RQ21–72.
Mar. 15, 1984	Amoco/Brown Oil Co.	RF21–12292.
Do	do.	RF21–12293.

[FR Doc. 84–11971 Filed 5–2–84; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of April 2 Through April 6, 1984

During the week of April 2 through April 6, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Herbert Holmes, 4/4/84, HFA–0213

Herbert Holmes filed an Appeal from a denial by the Nevada Operations Office of the DOE of a request for information which he submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the search performed by the Operations Office for documents responsive to Mr. Holmes' request was adequate and that no responsive documents existed. Accordingly, the Appeal was denied.

Howard L. Rosenberg, 14/2/84, HFA–0211

Howard L. Rosenberg filed an Appeal from a denial of a request for a waiver of search and copying fees associated with documents he received pursuant to the Freedom of Information Act. In considering the Appeal, the DOE found that there was a significant public interest in the subject matter of the request and that Mr. Rosenberg would effectively communicate information contained in the material to the public. However, the DOE also found that Mr. Resenberg had a personal interest in the documents, since he was being paid to prepare a report based on the material. The DOE therefore determined that a 50 percent reduction of fees was warranted. Accordingly, the Appeal was granted in part.

Remedial Orders

Entex Petroleum, Inc., 4/5/84, BRO–1252

Entex Petroleum, Inc. objected to a Supplemental Proposed Remedial Order (SPRO) in which the ERA found that the firm improperly sold crude oil from two of its leases at prices that exceeded the appropriate ceiling price levels. In considering Entex's objections, the DOE rejected the firm's argument that if the ERA had accounted for variances in temperature in calculating the firm's crude oil inventory, the leases would have qualified as stripper well properties. The DOE also rejected the firm's proposed alternate method for

calculating curde oil inventories, because it was based on estimated volumes which were less reliable than the actual volume data used by ERA. Accordingly, the DOE concluded that the SPRO should be issued as a final Supplemental Remedial Order.

H.H. Gungoll & Associates, 4/5/84, BRO–1234

H.H. Gungoll & Associates objected to a Proposed Remedial Order in which the Economic Regulatory Administration alleged that the firm misclassified a single crude oil producing premises as two properties, and sold the production at prices in excess of the applicable ceiling prices. After considering Gungoll's objections, DOE concluded that the PRO, with modifications, should be issued as a final Remedial Order. The important issues discussed in the Decision and Order include (i) the definition of property for federal price control purposes; and (ii) whether overcharges with respect to one property may be offset by undercharges made with respect to other properties.

Nola Oil Company, Inc., 4/4/84, HRO–0205

Nola Oil Company, Inc. responded to the allegations set forth in a Proposed Remedial Order issued to it by filing a Notice of Objection setting forth a general denial and statement of interest. NOLA failed to file a Statement of Objections, or otherwise respond to the precise findings of fact and conclusions of law contained in the PRO. The DOE examined the record and found that NOLA's Notice of Objection had failed to rebut the prima facie case established by the PRO. Therefore, the PRO was issued as a final Remedial Order.

Petition for Special Redress

USA Petroleum Company, 4/4/84, HEG–0029, HER–0086, HES–0041

USA petroleum Company filed a Petition for Special Redress and/of Application for Modification or Rescission with the Office of Hearings and Appeals. In its submission, USA sought an order that would provide security for payment of entitlements exception relief in the amount of $3.8 million, which was awarded to the firm in a Federal Energy Regulatory Commission proceeding. Among the remedies proposed by USA was its retention of $1.75 million which it is required to pay to the DOE under the terms of a consent order. USA further sought a stay of the requirement that it make further installment payments under the consent order. The firm also asked that ERA be stayed from disbursing the consent order fund until a final decision was reached on the Petition for Special Redress and other relief. In considering the USA submissions, the OHA determined that: (i) the firm had not met the threshold requirements for special redress relief by showing that no other administrative proceeding was available or that the agency was not complying with the law or its own regulations; (ii) the firm had not established the existence of "significantly changed circumstances," and accordingly was not entitled to modification or rescission of the consent order; and (iii) the firm's proposal that its obligation to make installment payments under the consent order be set-off against its outstanding entitlements exception relief was inappropriate because the requisite mutuality of obligations was lacking and the interests of third parties would be adversely affected. Accordingly, the Petition for Special Redress and/or Application for Modification or Rescission was denied, and the Application for Stay was dismissed.

Interlocutory Order

Pel-Star Energy, Inc., Economic Regulatory Administration/Pel-Star Energy, Inc., 4/4/84, HRZ–0165, HRZ–0187

Pel-Star Energy, Inc. filed a Motion to Dismiss a Proposed Remedial Order alleging that the firm charged prices in excess of those allowed crude oil resellers. In denying the Motion, the DOE found that, contrary to Pel-Star's assertions, the PRO presented a prima facie case. The ERA filed a Motion in which it sought to join four Pel-Star shareholders in the PRO proceeding. The DOE found that two of these individuals had received significant financial benefit as a result of Pel-Star's activities, and had played an active role in the transactions that were the subject of the PRO, and further that public policy considerations supported their joinder. Accordingly, the Motion to Join was granted in part.

Supplemental Order

O. B. Mobley, Jr., 4/4/84, HEX–0070

In a Decision and Order issued to O. B. Mobley, Jr. on December 5, 1978, the DOE ordered that overcharges escrowed by Mobley be disbursed to the Lion Oil Division of the Tosco Corporation (Tosco). In the present Order, the DOE pointed out that as a result of decontrol of petroleum prices, firms were no longer required to pass through to their own customers the refunds that they received. The DOE therefore determined that disbursing the funds to Tosco would not achieve the objective of effecting restitution to the parties ultimately aggrieved by Mobley's overcharges. Accordingly, the DOE decided to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V with respect to the escrowed funds.

Refund Applications

Belridge Oil Company/State of Wisconsin/ Belridge Oil Company/State of Nevada, 4/4/84, RQ8–62, RQ8–77

The States of Wisconsin and Nevada filed applications for second stage refunds in connection with a consent order fund made available by Belridge Oil Company. Wisconsin proposed to use its share of the consent order funds to supplement the Institutional Conservation program, which provides matching grants to schools and hospitals to install energy conservation measures. Nevada proposed to use its refund to publish a brochure promoting Park and Ride parking lots throughout the State. The DOE found that the plans proposed by the two States would benefit the individuals who sustained the impact of the alleged Belridge overchargs. Accordingly, the Applications were approved.

Standard Oil Company (Indiana)/Bystol Oil, Inc., et al., 4/5/84 RF21–12298, et al.

The DOE issued a Decision and Order approving refunds for 18 retailers of Amoco motor gasoline. Each of the applicants elected to apply for a refund based upon the presumption of injury and the formulae set forth in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). Under that presumption, for each gallon of Amoco motor gasoline purchased during the consent order period, a successful applicant received a refund equal to 40 percent of the volumetric refund amount (including accrued interest). Subsequently, the DOE was informed that six of the 18 firms had previously been granted refunds as wholesalers and therefore were entitled only to a supplemental 6 percent refund for sales made at the retail level. Accordingly, the DOE rescinded a total of $16,714 in excessive refunds granted to these six retailers.

Standard Oil Company (Indiana)/Capitol Rent a Truck, Inc.; Capitol Rent a Car, Inc., 4/5/84 RF21–6348, RF21–12286, RF21–12289.

On June 1, 1983, the DOE issued a Decision and Order approving Applications for Refund filed by Capitol Rent a Truck, Inc., and its affiliate, Capitol Rent a Car, Inc. (Capitol). Based on its assertion that it was a consumer of motor gasoline directly supplied by Amoco, Capitol received a refund based upon the presumption of injury and the formulae applicable to consumers of motor gasoline as outlined in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). Those presumptions permit such a consumer to receive a refund equal to 100 percent of the volumetric refund amount. Subsequently, the DOE learned that the nature of Capitol's operations made it likely that it was actually a retailer of Amoco gasoline and was thus entitled to receive refunds under the presumption method of only 40 percent of the volumetric amount. The DOE therefore found that Capitol's refund for motor gasoline purchases should be reduced. The DOE further found that Capitol was entitled to receive a refund as a reseller of Amoco middle distillates. The DOE decided that the amount of the excessive gasoline refunds that Capitol would be required to remit should be offset by its middle distillates refund. Accordingly, Capitol was directed to remit a total of $1,610 to the DOE.

Standard Oil Company (Indiana)/H&M Oil Company Standard Oil Company (Indiana)/ Carl W. Johnson 4/2/84 RF21–12296, RF21–12297

The DOE granted refunds to a reseller of Amoco middle distillates and to a retailer of Amoco motor gasoline. The refunds were based on the volumes of Amoco products purchased by each applicant. Subsequently, the DOE learned that the volume data submitted by the applicants was incorrect, and that they had received excessive refunds. Accordingly, the DOE required the two applicants to remit the overpayments to the Amoco escrow account.

Standard Oil Company (Indiana)/Walls & Marshall Fuel Company Inc., 4/2/84 RF21–3.

The DOE dismissed an Application for Refund filed by a purchaser of Amoco middle distillates, Wall & Marshall Fuel Company.

Inc., because the firm has failed to provide sufficient information to support its claim. Walls & Marshall then filed a Motion for Reconsideration in which it furnished more extensive documentation of its middle distillate refund claim. After carefully reviewing the information submitted, the DOE determined that the firm should receive a refund based upon its total purchases of 1,804,818 gallons of Amoco middle distillates. The amount of the refund was based upon the presumption of injury and formulae set forth in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). The DOE granted Walls & Marshall a refund of $693.

Dismissals

The following submissions were dismissed:

Name and Case No.

Doma Corporation, HRO-0204
Pester Corporation, HRO-0195, HRD-0200

The following application for refund from a retailer of Amoco motor gasoline was dismissed because the firm elected to accept the presumption of injury applicable to wholesalers:

Alco Oil Company, RF21-12295

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: April 26, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-11972 Filed 5-2-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

National Petroleum Council Subcommittee on Enhanced Oil Recovery; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council Subcommittee On Enhanced Oil Recovery.

Date and time: Friday, May 18, 1984—10:30 a.m.

Place: The Madison Hotel, Mount Vernon Room, 15th and M Streets, NW., Washington, D.C.

Contact: Gerald J. Parker, U.S. Department of Energy, Office of Oil, Gas and Shale Technology, Mail Stop D-122, GTN, Washington, D.C. 20545; Telephone: 301-353-3032.

Purpose of National Petroleum Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Tentative Agenda

—Review the draft report on Enhanced Oil Recovery.
—Review the schedule for completion of the Committee's assignment.
—Discuss any other matters pertinent to the overall assignment from the Secretary.
—Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. The Chairperson of the Subcommittee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gerald J. Parker at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on May 2, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84-12169 Filed 5-2-84; 11:59 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL 2534-4]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption Notice of Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act to adopt and enforce amendments to its exhaust emission standards and test procedures for particulates for new motor vehicles for the 1985, 1986-88 and 1989 and subsequent model years. The decision document is reprinted in its entirety below.

FOR FURTHER INFORMATION CONTACT: Mary Smith, Attorney/Advisor, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, Washington, D.C. 20460. Telephone: (202) 382-2514.

SUPPLEMENTARY INFORMATION: A copy of the above standards and procedures, as well as the record of the hearing and those documents used in arriving at this decision, are available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m.) at the U.S. Environmental Protection Agency, Central Docket Room (Docket EN-83-01), West Tower Lobby, 401 M Street, SW., Washington, D.C. 20460. Copies of the standards and test procedures are also available upon request from the California Air Resources Board, 1120 Q Street, Sacramento, California 95814.

Under section 307(b)(1) of the Act, EPA hereby finds that this is a final action of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

Dated: April 27, 1984.

William D. Ruckelshaus,

Administrator.

Environmental Protection Agency

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision of the Administrator.

I. Introduction

By this decision, issued under section 209(b) of the Clean Air Act, as amended (Act),[1] I am granting the State of California a waiver of federal preemption to adopt and enforce amendments to its motor vehicle pollution control program. Those amendments establish new standards and testing procedures for particulate exhaust emissions for diesel passenger cars (PC), light-duty trucks (LDT) and medium-duty vehicles (MDV).[2]

[1] 42 U.S.C. 7543(b) (1978).

[2] The amendments are set forth in section 1960.1, article 2, chapter 3, subchapter 1 of Title 13, California Administrative Code, as supplemented by "California Exhaust Emission Standards and Test Procedures for 1981 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" as amended August 26, 1982.

Section 209(a) of the Act provides:

> No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment. [42 U.S.C. 7543(a).]

However, with respect to standards, section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for:

> Any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards * * * [unless] the Administrator finds that: (A) the determination of the State is arbitrary and capricious, (B) the State does not need such State standards to meet compelling and extraordinary conditions, or (C) such State standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act].[3]

As previous decisions waiving Federal preemption have explained, State standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of the technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time frame.[4]

For enforcement procedures accompanying standards, I must grant the requested waiver unless I find that the procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards under section 202(a), or if the Federal and California certification and test procedures are inconsistent.[5] I note at the outset that the enforcement procedures for which California requests a waiver are identical to the corresponding Federal procedures and therefore do not, by themselves, present the issues of whether they may cause California standards to be less protective in the agregate or are inconsistent with section 202(a). Therefore, throughout this decision I focus my consideration of the standards alone.[6]

On the basis of the record before me, I cannot make the findings required for a denial of the waiver under section 209(b)(1) with respect to the amendments to California's particulate exhaust emission standards (particulate standards) and test procedures; therefore, I am granting the waiver of Federal preemption that California has requested.

II. Background

On December 2, 1980, the California Air Resources Board (CARB) first adopted particulate standards, identical to the then-applicable federal standards, for 1982 and subsequent model year PCs, LDTs and MDVs. CARB received a waiver of Federal preemption for those standards on December 28, 1981.[7] In a letter dated March 23, 1983, requesting the instant waiver (CARB Letter or Request),[8] CARB notified EPA that on August 26, 1982, it had amended its 1985 and subsequent model year particulate standards for PCs, LDTs and MDVs and had formally adopted the Federal test procedures applicable to particulate exhaust emission standards for diesel-powered vehicles. These amendments set particulate standards for PCs, LDTs and MDVs as follows:

Model Year and Particulate[9]
1985 ..... 0.4
1986–88 ..... 0.2
1989 and subsequent 0.08

On June 6, 1983, a public hearing concerning the waiver request was held at the EPA Region IX office in San Francisco.[10] The written comment period closed on July 25, 1983.[11] This determination is based on the record of that hearing, written submissions by CARB and other interested parties, and other relevant information.[12]

III. Standard of Proof

The role of the Administrator in a section 209 proceeding is to:

> Consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended denial of the waiver.

Motor and Equipment Manufacturer's Association, Inc. v. *EPA*, 627 F.2d 1095, 1122 (D.C. Cir. 1979) (*MEMA*). In *MEMA*, the court considered the standard of proof under section 209 associated with the two findings necessary to grant a waiver for an "accompanying enforcement procedure"—the "protectiveness in the aggregate" and "consistency with section 202(a)" findings. The court instructed:

> The standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision. [*Id.*]

The court went on to uphold the Administrator's finding that there must be "clear and convincing evidence" to show that the proposed procedures undermine the protectiveness of California's standards, noting that "[this standard of proof] also accords with the Congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare * * *." *Id.* With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden even if the standard were a mere preponderance of the evidence. *Id.* at 1122–1123. Although *MEMA* did not explicitly consider the standard of proof under section 209 in connection with a waiver request for "standards," there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations.

EPA's past waiver decisions have consistently made clear that:

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[3] California is the only State which meets the section 209(b)(1) eligibility criteria for receiving waivers. *See, e.g.*, S. Rep. No. 403, 90th Cong., 1st Sess. 632 (1967).

[4] *See, e.g.*, 43 FR 32182 (July 25, 1978).

[5] *See, e.g., Motor and Equipment Manufacturers Association, Inc.* v. *EPA*, 627 F.2d 1095, 1112 (D.C. Cir. 1979); 43 FR 25729 (June 14, 1978).

[6] California has indicated its intention to amend its testing procedures for diesel-powered vehicles to account for the storage and periodic burning (*i.e.*, regeneration) of particulate matter in trap-oxidizers. *See* State of California Air Resources Board "Notice of Public Hearing * * * Regarding Technical Changes to the Test Procedure for Diesel-Powered [vehicles] with Trap Oxidizer Systems," dated July 26, 1983, and accompanying Staff Report. However, EPA has of yet not received a request for a waiver in connection with those amended test procedures and thus I am not considering them in this decision.

[7] *See* 47 FR 1015 (January 8, 1982).

[8] Letter from James D. Boyd, Executive Officer, CARB, to Richard D. Wilson, Director, Office of Mobile Sources, EPA, dated March 23, 1983.

[9] The standards are expressed in grams per vehicle mile (g/mi).

[10] Oral testimony was heard from CARB, the Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA), General Motors Corporation (GM), Volkswagen of America, Inc. (VW), Chrysler Corporation (Chrysler), Automobiles Importers of America, Inc. (AIA), U.S. Technical Research Company (representatives of Automobiles Peugeot) (Peugeot) and American Motors Corporation (AMC).

[11] 48 FR 31460 (July 8, 1983).

[12] This information is contained in Docket EN–83–01.

Even in the two areas concededly reserved for Federal judgment by this legislation—the existence of "compelling and extraordinary" conditions and whether the standards are technologically feasible—Congress intended that the standard of EPA review of the state decision be a narrow one.

40 FR 23102, 23103 (May 28, 1975).

Congress' intent that EPA's review of California's decisionmaking be narrow has led EPA in the past to reject arguments that, whatever their appeal might seem to be, are not specified as grounds for denying a waiver:

The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution on California.

36 FR 17458 (August 31, 1971).[13] Thus, my consideration of all the evidence submitted in connection with this waiver request is circumscribed by its relevance to those questions which I may consider under section 209.

Finally, it is important to remember that the burden of proof in a section 209 waiver proceeding is squarely upon the opponents of the waiver:

The language of the statute and its legislative history indicate that California's regulations, and California's determination that they comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing, and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.

MEMA, supra, 627 F.2d at 1121.

IV. Discussion

A. Public Health and Welfare

I have already set forth in the introduction to this decision the criteria for review of the public health and welfare protectiveness issue as it pertains to both emission standards and accompanying enforcement procedures for which California requests a waiver.

CARB has made a determination that its particulate emission standards and test procedures are, in the aggregate, at least as protective of the health and welfare as corresponding Federal standards.[14] No commenter has questioned CARB's "protectiveness" determination, with the exception of the Natural Resources Defense Council, Inc. (NRDC), which expressed concern that the California particulate standard was not as protective as the then-existing Federal light-duty particulate standards for 1985.[15] However, since EPA has delayed imposition of its scheduled 1985 particulate standards for two years,[16] the California particulate standards are at least as numerically stringent for each model year, 1985 and subsequent, as the corresponding Federal standards.[17] Moreover, as noted above, CARB has adopted the Federal Test Procedure for measuring particulate emissions.[18] Thus, I cannot find that California's determination that its amended particulate standards and test procedures are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards, is arbitrary and capricious.

B. Compelling and Extraordinary Conditions

Under section 209(b)(1)(B) of the Act, I cannot grant the waiver if I find that California "does not need such State standards to meet compelling and extraordinary conditions." CARB states that it adopted its amended particulate standards in response to compelling and extraordinary conditions, including the impact on the health and welfare of its citizens caused by decreased visibility, as well as adverse health effects and the economic cost of soiling, anticipated from diesel vehicular particulate emissions.[19] A number of commenters from the automotive industry argue, on the other hand, that California has failed to demonstrate the existence of "compelling and extraordinary" circumstances, and, that even if such circumstances did exist, California's particulate standards are not needed to meet them.[20]

Before reviewing the various arguments and the supporting evidence, it is helpful to focus again upon the pertinent statutory language to determine the scope of my inquiry here. Section 209(b)(1)(B) provides in pertinent part that:

The Administrator shall . . . waive application of this section . . . if the State determines that the State standards will be, in the aggregate, at least as protective . . . as applicable Federal Standards . . . No such waiver shall be granted if the Administrator finds that—

* * * * *

(B) such State does not need such State standards to meet compelling and extraordinary conditions. . . .

CARB argues that under this criterion EPA's inquiry is restricted to whether California needs its own motor vehicle pollution control *program* to meet compelling and extraordinary conditions, and not whether any given standard, (*e.g.*, the instant particulate standards) is necessary to meet such conditions.[21] A number of the

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[13] *See also MEMA, supra*, 627 F.2d at 1116–1117 (holding that EPA properly declined to consider the alleged anti-competitive effect of California's in-use maintenance regulations).

[14] CARB Letter of Request at 2. Although CARB limited its analysis to its particulate standards, rather than to its entire set of standards, no manufacturer has disputed CARB's determination that its standards are as least as protective as Federal standards. Moreover, EPA has already considered California's determination that its set of standards is at least as protective as the applicable Federal program, and could not find the California determination to be arbitrary and capricious. *See* Determination of the Administrator, dated December 23, 1982, Docket EN–82–9 (granting California a waiver of Federal preemption to enforce its optional standards for oxides of nitrogen) at 6–7, n. 11.

[15] Letter from David Doniger, Senior Staff Attorney, NRDC, to William Heglund, Acting Director, Manufacturers Operations Division, EPA, dated June 3, 1983 at 2, n. 1. The California light and medium-duty vehicle particulate standard for 1985 is 0.4 g/mi while the then-existing Federal standard for the 1985 model year was 0.2 g/mi for light-duty vehicles (LDV) and 0.26 g/mi for LDTs. (The Federal classification of "LDV" generally corresponds to California's classification of PC. *See* 40 CFR 86.082–2(b).)

[16] See 49 FR 3010 (January 24, 1984).

[17] Compare the California particulate standards, *supra* at 4, with the current Federal particulate standards of 0.6 g/mi for LDVs and LDTs for the 1985 and 1986 model years, and 0.2 g/mi for LDVs and 0.26 g/mi for LDTs for the 1987 and subsequent model years. *See* 49 Fed. Reg. 3010 (January 24, 1984).

[18] California Exhaust Emission Standards and Test Procedures at 1.

[19] CARB Letter of Request at 1.

[20] *See, e.g.*, Transcript (Tr.) of Hearing on the CARB Request for a Waiver of Federal Preemption for Particulate Emission Standards, Docket EN–83–01, held on June 7, 1983, at 51 (MVMA), 120 (VW) and 154 (AIA); "Memorandum of Law of AIA and MVMA to EPA Regarding California Request for Waiver of its 1985 and Later Model Year Particulate Standards," dated July 25, 1983 (AIA/MVMA Comment) at 7; "General Motors Submission to EPA of Supplemental Information Relating to the June 7, 1983, Public Hearing Considering the California Request for a Waiver of Federal Preemption for the California 1985 and Later Light-Duty Diesel Particulate Standards," dated July 25, 1983 (GM Comment) at 13; Comments of Daimler-Benz, A.G. to California's Request for a Waiver of Federal Preemption for Particulate Emission Standards for Diesel Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," dated July 18, 1983 (DB Comment) at 5.

[21] "Supplemental Submittal of California Air Resources Board," dated July 25, 1983 (CARB Comment) at 9–11.

manufacturers assume that my consideration of whether "compelling and extraordinary conditions" exist must be with respect to California's particulate situation only. For the reasons elaborated below, I agree with California that my basis inquiry concerns whether "compelling and extraordinary conditions" exist that justify California's continued need for its own mobile source emissions control program.

Support for this interpretation, is found in the legislative history of section 209, particularly the fact that in creating an exception to Federal preemption for California, Congress expressed particular concern with the potential problems to the automotive industry arising from the *administration* of two programs.[22] Therefore, as CARB points out, "[t]he 'need' issue thus went to the question of standards in general, not the particular standards for which California sought [a] waiver in a given instance."[23]

The interpretation that my inquiry under (b)(1)(B) goes to California's need for its own mobile source program is borne out not only by the legislative history, but by the plain meaning of the statue as well. Specifically, if Congress had intended a review of the need for each individual standard under (b)(1)(B), it is unlikely that it would have used the phrase "* * * does not need *such* state standards" (emphasis supplied), which apparently refers back to the phrase "State standards * * * in the aggregate," as used in the first sentence of section 209(b)(1), rather than to the particular standard being considered. The use of the plural, i.e., "standards," further confirms that Congress did not intend EPA to review the need for each individual standard in isolation.[24] Given that the manufacturers have not demonstrated that California no longer has a compelling and extraordinary need for its own program, which now includes these amended particulate standards, I cannot deny the waiver on this basis.[25]

Furthermore, a review of the legislative history of section 209 additionally reveals that the phrase "compelling and extraordinary conditions" primarily refers to certain general circumstances, unique to California, primarily refers to certain general circumstances, unique to California, primarily responsible for causing its air pollution problem. The House debate on the adoption of the original (1967) California waiver provision is most probative in this regard. Representative Harley Staggers, chairman of the House Interstate and Foreign Commerce Committee, which was responsible for the legislation, stated:

> The majority of the committee felt that the overall national interest required administration of controls on motor vehicle emissions, with special recognition given by the Secretary to *the unique problems facing California as a result of numerous thermal inversions that occur within that state because of its geography and prevailing wind patterns.*

113 CONG. REC. 30948 (bound ed. November 2, 1967) (emphasis supplied). These geographical and climatic factors were cited as "compelling and extraordinary" factors time and time again during the House debate.[26] The other ingredient recognized by Congress as contributing to "compelling and extraordinary conditions" was the presence and growth of California's vehicle population, whose emissions were thought to be responsible for ninety percent of the air pollution in certain parts of California.[27]

It is evident from this history that "compelling and extraordinary conditions" does not refer to levels of pollution directly, but primarily to the factors that tend to produce them: geographical and climatic conditions that, when combined with large numbers and high concentrations of automobiles, create serious air pollution problems. The question of whether these fundamental conditjons continue to exist was not directly dealt with by the manufacturers.[28] Rather, the manufacturers have advanced a number of arguments based on narrower views of California's need for its particulate standards and on the relatively slight benefit which they claim will accure to the state by imposing its more stringent standards. These arguments provide an insufficient basis for denying the waiver, not only because they are mistakenly premised on the theory that each standard must be analyzed in isolation, but also because, as I will explain below, the manufacturers would not have met their burden of proof even if their theory were correct.

AIA and MVMA assert that the phrase "compelling and extraordinary conditions" found in section 209 refers primarily to California's smog problem and that California's particulate standards do not have "the benefit of the Congressional presumptions which supported all prior waivers."[29] If Congress had been concerned only with California's smog problem, however, it easily could have limited the ability of California to set more stringent standards to hydrocarbons and oxides of nitrogen—the only two regulated automotive pollutants substantially contributing to that phenomenon.[30]

Instead, Congress took a broader approach consistent with its goal of allowing California to operate its own comprehensive program. As discussed below, however, even absent a "Congressional presumption" including

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[22] *See id.* at 10.

[23] *Id.*

[24] Indeed, to find that the "compelling and extraordinary conditions" test should apply to each pollutant would conflict with the amendment to section 209 in 1977 allowing California to select standards "in the aggregate" at least as protective as federal standards. In enacting that change, Congress explicity recognized that California's mix of standards could include some less stringent than the corresponding federal standards. *See* H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 302 (1977). Congress could not have given this flexibility to California and simultaneously assigned to the state the seemingly impossible taks of establishing that "extraordinary and compelling conditions" exist for each less stringent standard. Since no such specific finding is required for less stringent standard, no such finding should be required for each more stringent standard.

[25] AIA and MVMA maintain that "even the California smog problem no longer represents the unique situation it once was." AIA/MVMA Comment at 13, n.3. Even to the extent this may be true, it does not directly bear upon whether the "compelling and extraordinary conditions" exist since the continuation of California's more stringent program would appear likely to be a basic reason for any improvement in the smog problem.

Further, Congress has made it abundantly clear that the manufactourers would face a heavy burden in attempting to show "compelling and extraordinary conditions" no longer exist: The Administrator, thus, is not to overturn California's judgment lightly. Nor is he to substitute his judgment for that of the State. There must be clear and compelling evidence that the State acted unreasonably in evaluating the relative risks of various pollutants in light of the air quality, topography, photochemistry, and climate in that State, before EPA may deny a waiver. [H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 302 (1977).]

[26] *See, e.g.*, 113 CONG. REC. *supra*, at 30942, 30943 (remarks of Rep. Tunney); 30963 (remarks of Rep. Wilson); 30967 (remarks of Rep. Holifield referring to "atmospheric inversion"); 30955 (remarks of Rep. Roybal); 30975 (remarks of Rep. Moss referring to "unique" meteorological problems).

[27] *See id.* at 30946 (remarks of Rep. Bell); 30950 (remarks of Rep.—Corman: "The uniqueness and the seriousness of California's problem is evident-more than 90 percent of the smog in our urban area is caused by automobiles, and in the next 15 years the number of automobiles in the state will almost double").

[28] The failure of the manufacturers to reach this question is particularly significant given that the topographical and climatic conditions that section 209(b) is in part premised upon not only trap "smog," but also may prevent the dispersal of fine particulate matter such as that emitted from diesel engines.

[29] AIA/MVMA Comment at 14.

[30] Congress was apparently aware that California might decide to control other non-smog-producing pollutants. *See, e.g.*, 113 CONG. REC. 30951 (November 2, 1967) (remarks of Rep. Herlong: "[T]he total program for control of automotive emissions is expected to include [in addition to hydrocarbons and nitrogen oxides] carbon monoxide, lead and *particulate matter.*" (emphasis supplied.)

particulates, I would be unable to conclude on this record that the opponents of the waiver have met their burden of proof.

A number of manufacturers contend that California's determination that it needs its more stringent particulate standards is supported by an unrealistically high prediction of diesel penetration of the California market.[31] However, these manufacturers do not adequately respond to the fact that California's determination was based on both low demand (*i.e.*, 10%) and high demand (*i.e.*, diesel sales increasing to 23% of the California market by 1990) scenarios.[32] The manufacturers also ignore the upward trend in diesel penetration in California that contrasts with the rest of the country.[33] The fundamental rejoinder to the manufacturers' argument remains, however, that:

> Arguments concerning * * * the marginal improvements in air quality that will allegedly result [from implementation of the standards], and the question of whether these particular standards are actually required by California * * * fall within the broad area of public policy. The EPA practice of leaving the decision on such controversial matters of public policy to California's judgment is entirely consistent with the Congressional intent * * *.[34]

MVMA, AIA, GM and VW also argue that in order to be granted a waiver for its particulate standards California must have a "unique" particulate problem; i.e., one that is demonstrably worse than in the rest of the country.[35] However, as CARB points out, there is no indication in the language of section 209 or the legislative history that California's pollution problem must be the worst in the country, for a waiver to be granted.[36]

Nonetheless, CARB has shown that California has unique visibility problems. Certain areas of the state, including the South Coast Air Basin, have the worst visibility in the country.[37] CARB argues that the problem is particularly compelling in view of the potentially scenic vistas in many of the areas with the worst visibility and the negative impact such poor visibility has on its tourism industry.[38] CARB relies on scientific studies that, it argues, establish that an increase in diesel particulates will reduce visibility due to their light scattering and absorption characteristics.[39]

Additionally, CARB concludes that diesel particulate emissions, in combination with the high ozone and oxides of nitrogen concentrations found in areas such as the South Coast Air Basin, potentially pose at least three unique health problems. First, polycyclic aromatic hydrocarbons adsorbed by diesel particulates could react with specific photo-oxidants and form potentially more hazardous compounds.[40] Second, impaired lung defense mechanisms caused by certain compounds in photochemical smog could increase the retention time of potentially mutagenic and carcinogenic compounds in the lungs.[41] Finally, CARB fears that "carcinogens adsorbed to diesel particles could act synergistically with certain compounds in photochemical smog."[42] The manufacturers challenging the waiver request have not met their burden of overcoming California's conclusions.

Several of the manufacturers argue California's "need" for stricter particulate standards by principally arguing that California has failed to demonstrate that its standards, as opposed to the Federal standards, are "needed" based on the emissions benefits they will provide.

AIA and MVMA argue that even if California does have a particulate problem it does not follow that these particulate standards are needed to address that problem.[43] Similarly, GM contends that CARB has not determined explicitly the relative impact of its standards compared with the Federal standards and, therefore, has not demonstrated its need for its own standards.[44] However, it is not necessary for CARB to quantify the exact emissions benefits its new standards will create when it is clear that its standards are significantly more stringent than the corresponding Federal particulate standards and thus will result in greater emission reductions. *See* page 6, *Supra.*

Moreover, even if it were true that California's total suspended particulate problem is, as certain manufacturers argue,[45] no worse than some other areas of the country, this does not mean that *diesel* particulates do not pose a special problem in California. CARB recognizes that diesel particulates do not appear numerically significant when compared to total suspended particulates.[46] However, as discussed above, California has submitted evidence that diesel particulates have a unique chemical composition and size that make them particularly harmful with respect to visibility and potentially to the public health.[47]

GM, on the other hand, contends that the composition of particulates (i.e., the size distribution and the amount contributed by motor vehicles) in California is not significantly different from that found elsewhere in the country.[48] GM also disputes CARB's analysis that its stricter particulate standards are needed due to potential health risks on the basis that diesel particulates only contribute a relatively minor amount of the mutagenicity risk from airborne particulates.[49] Even assuming, *arguendo*, that these contentions are true, GM has not secceeded in showing that CARB does not need its standards. First, California has already demonstrated that its visibility is uniquely poor, which supports its need for its more stringent standards to prevent even further degradation. Second, CARB has indicated that its concerns about potential health risks spring not only from the potential mutagenicity and carcinogenity of diesel particulates *per se*, but from their exacerbation by California's characteristic smog.[50] GM

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[31] *See, e.g.*, Tr. at 37 (MVMA asserting that CARB determination is based upon inaccurate prediction of 23% diesel penetration); DB Comment at 5.

[32] CARB Comment at 5 and CARB Staff Report regarding the adoption of particulate exhaust emission standards for 1985 and subsequent model year diesel-powered vehicles, dated July 9, 1982 (CARB Particulates Staff Report) at 58.

[33] Compare California diesel penetrations of 4.2%, 5.6% and 7.0% for the years 1980–1982, respectively (*id.*) with nationwide diesel penetrations of 4.4%, 6.1% and 4.5% for the same years. Hearing statement of AIA, Exhibit A.

[34] 41 FR 44209, 44210 (October 7, 1976). This is particularly true where, as here, California's prediction is necessarily speculative due to the strong correlation between diesel sales and historically volatile fuel prices.

Moreover, other factors, such as the recent decisions of certain manufacturers to significantly cut diesel prices may contribute to a resurgence in diesel sales. *See Ward's Automotive Reports*, September 26, 1983 at 307, and *Automotive News*, August 29, 1983 at 46.

It is also worth noting that at least one division of a major manufacturer predicts a significant increase in diesel penetration in California for 1984. *Automotive News*, August 29, 1983, at 46.

[35] MVMA/AIA Comment at 12–14; GM Comment at 13; and Statement by Volkswagenwerk AG, *et al.*, concerning California State Motor Vehicle Particulate Emission Standards, dated June 7, 1983 (VW Comment) at 4.

[36] *See* CARB Comment at 12–13.

[37] CARB Comment at 14–15.

[38] *Id.*

[39] CARB Particulates Staff Report, Exhibit A.

[40] CARB Comment at 17.

[41] *Id.* at 17–18.

[42] *Id.* at 19.

[43] AIA/MVMA Comment at 15.

[44] *See, e.g.*, GM Comment at 16 and Attachment I at 3.

[45] *See, e.g.*, AIA/MVMA Comment at 14.

[46] CARB Particulates Staff Report at 58.

[47] *See, e.g., id.* at Exhibit A, pp. 1 and 6.

[48] GM Comment at 15.

[49] *See, e.g.*, GM Comment, Attachment I at 4.

[50] *See*, notes 40–42 and accompanying text.

has not adequately demonstrated that the composition of particulates in California presents no special health problems, in view of this showing by CARB.

CARB has considered scientific information that does not support its position that its stricter standards are needed,[51] but has concluded, on balance, that it can best protect the health and welfare of its citizens by implementing those standards. As indicated above, CARB has articulated numerous reasons why it believes diesel particulates present a compelling and extraordinary problem. EPA has long recognized that:

> The structure and history of the California waiver provision clearly indicate a Congressional intent and an EPA practice of leaving the decision on ambiguous and controversial public policy to Califorina's judgment.

40 FR 23101, 23103 (May 28, 1975). Thus, even if my finding regarding the existence of "compelling and extraordinary conditions" were focused only upon California's particulate problem, I could not find on this record that the opponents of the waiver had met their burden of proof to show that such conditions do not exist.

C. Consistency with Section 202(a)

Under section 209(b)(1)(C), I must grant California its waiver request unless I find that California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. Section 209(a)(2) states, in part, that any regulation promulgated under its authority, "shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period."

EPA has long held that consistency with section 202(a) does not require that all manufacturers be permitted to sell all motor vehicle models in California. Rather, as discussed below, EPA has found California standards consistent with section 202(a) in cases where certain models were eliminated but the "basic market demand" was satisfied.

For example, in granting a waiver to California to implement standards more stringent than Federal standards for the 1975 model year, and which would force the introduction of catalyst technology, the Administrator acknowledged:

> At these levels, I expect the manufacturers to market a full range of vehicles in California, although there may well be a few models of some manufacturers which do not meet these standards. Any unmarketed models would be expected to be replaced by other models of the same manufacturer, or by vehicles sold by other manufacturers. In this way, competitive pressure is likely to be forced for clean air.

38 FR 10317 (April 26, 1973).

Similarly, in granting a waiver to California to enforce its more stringent hydrocarbon emission standards for motorcycles, the Administrator found that:

> * * * while California's emission standards may severely limit the number of two stroke motorcycles which may be sold in California in the future, this will not result in the unavailability of motorcycles which are substantially similar in size and function to the current two strokes. Two stroke and four stroke engines merely represent two different types of engines for the same general class of motorcycles.
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> I am not deciding here that the "basic demand" test of *"International Harvester* [v. *Ruckelshaus*, 478 F. 2d 615 (D.C. Cir. 1973)]" is applicable in the context of a California waiver. However, as I stated in the May 28, 1975, (40 FR 23101) California waiver decision, I do believe that if the test were to be applied, it would not be applicable to its fullest stringency due to the degree of discretion given to California in dealing with its mobile source pollution problems. In addition, the court's approach in "International Harvester" is fully consistent with the potential outcome of eliminating some or all two stroke engines from the California motorcycle market. As the court stated:
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> We are inclined to agree with the Administrator that as long as feasible technology permits the demand for new passenger automobiles to be generally met, the basic requirements of the Act would be satisfied, even though this might occasion fewer models and a more limited choice of engine types. The driving preferences of hot rodders are not to outweight the goal of a clean environment. [478 F. 2d at 640].

41 FR 44209, 44213 (October 7, 1976) (motorcycle waiver decision).

The rationale of these two earlier decisions, acknowledging that some models might be unavailable under California's more stringer standards, is reflected in, for example, the fact that for the 1983 model year, 73 models of small gasoline-powered pick-up trucks are available federally while only 55 models are available in California.[52]

Only once has the Agency found a PC, LDT or MDV standard inconsistent with section 202(a) in a California waiver proceeding. In that case, imposition of the standard would have forced manufacturers out of the California market for an entire class of vehicles, *i.e.*, light-duty trucks. *See* 38 FR 30136 (November 1, 1973). Thus, at least some manufacturers would have been unable to market any vehicles "substantially similar in size and function" (*see* motorcycle waiver decision, *supra*, 41 FR 44213) to light-duty trucks.

Ultimately, I conclude that Congress left to California the policy choice that its standards might result in some reduction of model availability for its citizens. I cannot lightly overturn California's judgment that some sacrifice in model availability is worth the benefits of reduced exposure to particulates.[53] If the manufacturers "dislike the substance of the CARB's regulations * * * then they are free to challenge the regulations in the state courts of California." *MEMA, supra*, 627 F.2d. at 1105. The scope of my review of whether California's action is consistent with section 202(a) is narrow; it is limited to determining whether those opposed to the waiver have met their burden of establishing that California's standards are technologically infeasible. *Id.* at 1126.

1. *1985 standard*—CARB indicates that its 1985 particulate standard of 0.4 gram per mile is in effect a "capping standard" designed to prevent manufacturers from increasing the existing particulate emissions of their vehicles in an effort to meet the stringent California NO_x standard to be implemented in 1984.[54] CARB had previously projected that its 1985 particulate standard, in conjuction with its NO_x standard, might result in the unavailability of up to one-third of the diesel-powered passenger cars that would otherwise be available in 1985.[55]

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[51] *See, e.g.*, CARB Comment at 18–21 discussing, *inter alia*, the National Research Council report "Health Effects of Exposure to Diesel Exhaust," which report disagreed with CARB's conclusion that standards stricter than 0.6 g/mi are warranted now. Chrysler and AIA argue that this report demonstrates and absence of "compelling and extraordinary conditions." *See* statement by Gordon E. Allardyce, Manager, Regulatory Analysis and Planning, Chrysler Corporation, dated June 7, 1983 at 3 and Hearing Statement of AIA at 5. Of course, EPA has recently affirmed its commitment to the imposition of the 0.2 g/mi standard, which was chosen primarily to protect the public health.

[52] CARB Staff Report Regarding Certification of Federally Certified Light-Duty Motor Vehicles for Sale in California (June 13, 1983) at 11.

[53] *Cf. MEMA, supra*, 627 F.2d at 1119 ("The EPA Administrator does not have authority to regulate either the motor vehicle manufacturing industry or the State of California under a broad charter to advance the public interest.")

[54] The 1984 and subsequent model year NO_x standards are 1.0 g/mi for all PCs and for LDTs and MDVs under 4,000 lbs. and 1.5 g/mi for LDTs and MDVs from 4,000 lbs to 6,000 lbs. CARB's concern over the impact of these more stringent NO_x standards stems from the fact that increased exhaust gas recirculation—a primary means of NO_x reduction—tends to lead to proportionally increased particulates. *See, e.g.*, CARB Particulate Staff Report at 4.

[55] Tr. at 21.

However, more recently CARB has submitted 1983 and 1984 model year certification data which indicate that numerous engine families already meet the 1985 model year standards, while many other engine families are close to these standards.[56] Only three of the thirty-one 1983 model year and two of twenty-one 1984 model year certified diesel PC, LDT and MDV engine families exceed the 0.4 g/mi. particulates standard.[57] CARB has stated that when required to meet the more stringent 1984 NO_x standard some of the engine families serving heavier models will experience increases in particulates that may carry them over the 0.4 g/mi standard.[58] However, CARB also indicates that "[t]he 1983 [certification] values indicate that for a significant majority of engine families, simple engine calibration changes should maintain particulates below a 0.4 g/mi emission level while the 1.0 g/mi NO_x standard is met."[59]

The manufacturers assert great skepticism about their ability to simultaneously comply with the 1985 NO_x and particulate standards. All vehicle manufacturers publicly maintain that trap-oxidizers will not be commercially available for the 1985 model year.[60] Thus, engine modifications such as electronically controlled exhaust gas recirculation (EGR) and electronic fuel injection appear to be the primary new technologies available to attempt to attain the standards. However, some manufacturers argue that additional engine controls will be insufficient or unavailable in time to meet the 1985 standards.

For example, DB submits that diesel passenger cars over 3,500 pounds will be unable to meet 1985 particulate and NO_x standards simultaneously. It argues that since they "are the only class of vehicles which will require technological improvements to meet the [1985 California particulate] standard," they should be separately considered for CARB's and EPA's "technological analysis."[61] Although California could have subdivided the diesel class in setting its particulate standards, I cannot find that its approach is arbitary, so long as Califorina's standards are consistent overall with section 202(a). Heavier diesel-powered passenger cars, while generally having a fuel economy advantage over similar size gasoline-powered vehicles, are not truly unique in function.[62] Even if these models are unavailable in California, basic demand may be met through DB's smaller diesels,[63] its remaining large gasoline powered vehicles,[64] or the available large diesel and gasoline-powered vehicles of other manufacturers.

GM asserts that its 5.7 liter(L) and 6.2L engine families will be unavailable in California in 1985 due to the combination of the 0.4 g/mi particulate standard and the 1985 NO_x standard.[65] The 5.7L engine family represented slightly less than fifty precent of GM's diesel passenger car sales in California for 1983 production through March,[66] while the 6.2L engine is the only light-duty truck diesel engine family that GM currently offers in California.[67] These engine families represent approximately 1 percent and 37 percent of GM's PC and LDT total sales in California, respectively.[68] GM does have two other diesel PC engine families that can meet the 1985 California standards,[69] though it appears that neither engine can be utilized in GM's heaviest PC series.[70] Thus, GM, like DB, will not be eliminated from the California marketplace as the result of imposition of the 1985 standards.

VW maintains that the 0.4 g/mi particulate standard will force "our largest displacement, diesel-powered vehicles out of the California market."[71] However, VW has already certified a total of six 1983 and 1984 model year engine families that meet both the 1985 NO_x and particulate standards.[72] It thus appears very likely that VW will be able to offer a wide range of diesel-powered vehicles for the 1985 model year.

Ford states that one of its two diesel passenger car engines planned for production in 1985 will be unavailable in California in light of the 0.4 g/mi particulate standards.[73] This engine was to be utilized in PCs weighing 3,625–4,000 lbs and was anticipated to account for aproximately one-third of its PC sales.[74] Ford additionally "estimates that 14 of the 24 Ford [LDT] powertrains" (*i.e.*, combinations of truck body, transmission and axle ratio) planned for the engine it intends to offer in LDTs in 1985, are "estimated * * * [not] to meet design targets associated with the [standards]." These powertrains account for "just over 50 percent of Ford's projected diesel light truck sales."[75] Even if Ford's forecasts eventually prove to be true, however, Ford nonetheless appears capable of marketing a diesel-powered line of LDTs and all but its heaviest diesel-powered passenger cars.

Other manufacturers, including Nissan,[76] Toyota,[77] Mitsubishi,[78] BMW

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[56] The mean 1983 California certification emission rates (expressed in g/mi) for diesel-powered vehicles are:

PC: 0.3 pm; 1.16 NO_x

LDT: 0.27 pm: 1.14 NO_x

MDV: 0.35 pm; 1.31 NO_x

CARB Comment at 23. Three manufacturers have certified 1983 model year diesel-powered PC engine families to the 1985 California standards for both NO_x and particulates; two manufacturers have certified 1983 model year diesel-powered LDT engine families to the 1985 standards; and one 1983 model diesel-powered MDV engine family has also attained the 1985 standards. *Id.* at 24. More significantly, all but two of the 1984 model year California certified diesel-powered PC, LDT, and MDV engine families representing nine manufacturers and twenty different engine families (fifteen PCs, four LDTs and one MDV) meet both the 1985 NO_x and particulate standards. *See* CARB Staff Report: "Consideration of Petition by General Motors Corporation to Amend * * * 1985 and Subsequent Model Year Particulate Exhaust Emission Standards for Diesel-Powered * * * Vehicles," dated September 22, 1983 (CARB Staff Report on GM Petition), at 5; and 1984 California Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Certification Emissions Data (dated October 24, 1983) (1984 California certification data).

[57] CARB Comment at 23–24; 1984 California certification data.

[58] Tr. at 21.

[59] CARB Comment at 26.

[60] *See, e.g.*, AIA/MVMA Comment at 18, n. 7. But *see* "Wards Engine Update," August 15, 1983, indicating that DB may be attempting to certify to California standards a trap-oxidizer-equipped turbocharged engine for the 1985 model year.

[61] DB Comment at 8.

[62] *Cf.* motorcycle waiver decision, *supra*, 41 Fed. Reg. at 44213.

[63] DB has certified a 1984 model year diesel PC that meets the 1985 standards for NO_x and PM. CARB Staff Report on GM Particulate Petition at 5.

[64] DB indicates that it has a gasoline substitute for one of its four models over 3,500 lbs. DB Comment at 10. DB has also certified at least one other gasoline engine family for use in vehicles over 3,500 lbs for which there is no diesel substitute.

[65] GM Comment at 5, 8.

[66] *Id.* at 9.

[67] *Id.* GM is, however, currently undergoing California certification on a smaller 1984 model year engine family, which has already been certified to the 1985 standards by its manufacturer, Isuzu, for potential use in its LDTs.

[68] *Id.*

[69] CARB Comment at 24.

[70] Letter from William C. Chapman, Director, Washington, D.C. office, Industry-Government Relations, General Motors, to Christopher C. Demuth, Administrator, Information and Regulatory Affairs, U.S. Office of Management and Budget, dated August 2, 1983.

[71] VW Comment at 2.

[72] *Id.*; and 1984 California certification data.

[73] Letter from Donald R. Buist, Ford, to William Heglund, dated July 25, 1983, at 3. This letter did not include testing data.

[74] *Id.*

[75] *Id.* at 4.

of North America (BMW),[79] and Peugeot,[80] have alleged that it will be difficult or impossible for them to meet the 1985 particulate standard in conjunction with the more stringent NO_x standards for some or all of their diesel-powered PCs and LDTs. The fact remains, however, that all of these manufacturers (with the exception of BMW, which has been undergoing certification testing) have already certified at least one diesel engine family capable of meeting the 1985 particulate and NO_x standards.[81]

MVMA, GM and AMC additionally argue that California's particulate standards for LDTs are inconsistent with section 202(a) because they are identical to the PC standards, whereas the Federal particulate standard for 1987 and subsequent model year LDTs is less stringent than for corresponding model year PCs.[82] However, as I indicated above with respect to heavier passenger cars, *supra* at 31, the only requirement needed to show consistency with section 202(a) is that the standards be technologically feasible; there is no requirement that California set different standards for different sizes or types of vehicles. The California 1985 model year LDT standards appear to be feasible given the previously described certification data indicating that six LDT engine families, all from different manufacturers, have already been certified to both the 1985 particulate and NO_x standards, and the fact that the mean certification level for 1983 LDTs was less than that for the corresponding PCs.[83]

A review of the above data from the manufacturers and CARB reveals that some diesel engine families serving vehicles 3,500 pounds and greater may be eliminated from California in the 1985 model year. However, each of the ten manufacturers currently making diesel passenger cars in California appears capable of certifying at least one diesel engine family for use in PCs for 1985. At least six of the eight current manufacturers of diesel LDTs have demonstrated their ability to meet the 1985 standards. In view of these facts, I cannot find that the manufacturers have met their burden of establishing that the 1985 particulate standards are technologically infeasible, and thus I cannot find that the California 1985 standard is inconsistent with section 202(a).[84]

2. *1986–1988 standards*— CARB forecasts that trap-oxidizers (traps) will be available for use in the 1986 model year in the limited California market.[85] The manufacturers uniformly reject this possibility, maintaining that the earliest that traps will be available is for the 1987 model year and that the 1986 model year particulate standard of 0.2 g/mi therefore is technologically infeasible.[86] A number of manufacturers also argue that EPA's decision to delay imposition of the nationwide 0.2 g/mi particulate standard until 1987, in part because of potentially insufficient leadtime, makes California's imposition of its 0.2 g/mi standard for 1986 inconsistent with section 202(a).[87] However, this reliance is misplaced for a number of reasons. First, the federal leadtime assessment was expressly based on trap-oxidizer availability on a nationwide basis:

> It should be noted, however, that these conservative leadtime projections consider only the time necessary to enable manufacturers to introduce trap-oxidizers on most or all models requiring them in order to meet the 0.2 g/mi particulate standard on a nationwide basis. The Agency's decision to grant a delay until the 1987 model year to provide adequate leadtime on a Federal basis does not consider whether trap-oxidizer technology may be available at an earlier date in the California market if needed to meet the State's 1986 model year implementation of the 0.2 g/mi standard for light-duty motor vehicles.

See 49 FR 3010, 3013 n. 7 (January 24, 1984) (preamble to federal particulate matter standards for diesel-powered light-duty vehicles and light-duty trucks). It seems clear that the introduction of trap-oxidizers in a single state comprising approximately a tenth of the nationwide market would not be as difficult a task, and no information to the contrary has been submitted.

Moreover, EPA's conservative leadtime analysis must be viewed in the context of assessing the risk of applying technology on a nationwide basis rather than only in the California market. The Agency has recognized this important distinction previously in denying Volvo's request for reconsideration of a grant of a waiver to California to enforce new stringent NO_x standards. Volvo had argued that California's standards were "inconsistent" with Agency feasibility findings made in granting Volvo a nationally applicable section 202(b) NO_x waiver. In rejecting that contention the Agency responded:

> [In granting Volvo the NO_x waiver], a finding of unreasonable risk in applying technology nationally was made rather than a finding of technological infeasibility. The risks and costs inherent in attempting to certify an engine family for sale in forty-nine states, which were taken into account for the federal diesel NO_x waivers, cannot be equated with the risks and costs of attempting to produce complying vehicles for the limited California market.

46 FR 22032, 22035 (April 15, 1981).

Historically, EPA has granted waivers allowing the introduction of new technology in California prior to its introduction nationwide. For example, as discussed above, EPA waived preemption of the standard requiring the introduction of catalysts in California a

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[76] Nissan's Comments to EPA on CARB WAiver Application for Diesel Particulate Standards, dated July 6, 1983, at 2, arguing that Nissan cannot meet the standards for one engine family due to potential emission control deterioration.

[77] Letter from J. Kawona, General Manager, U.S. Office, Toyota Motor Corporation, to William Heglund, Acting Director, Manufacturers Operations Division, EPA dated July 14, 1983 ("[a] significant amount of the diesel powered vehicles which are to be marketed in California will not meet this [particulate] standard * * *").

[78] Letter from M. Fujimato, General Manager, Technical Administration Department, Office of Product Planning and Engineering, Mitsubishi, to William Heglund, EPA, dated July 5, 1983 (the 1985 standard "would be difficult to meet with our light-duty truck, taking account of variation of particulate emission level[s] in production").

[79] Letter from Wilhelm Hall, Manager Emission Control Engineering, BMW, to William Heglund, EPA, dated July 7, 1983 (engine for 4,000 lbs vehicle class cannot meet both standards; "extremely difficult" for engine designed for 3,500 lbs class to meet standards).

[80] Peugeot Comments on the California Request for A Waiver of Federal Preemption with Respect to Model Year 1985 and Later Particulate Standards at 1 ("[o]ur most sophisticated EGR system will unfortunately not allow a large percentage of production vehicles to meet the [1985 particulate] standards.")

[81] CARB Comment at 24; CARB Staff Report on GM Request at 5; 1984 California certification data. Indeed, Nissan and Toyota each have certified both a PC and a LDT meeting the 1985 standards. CARB Comment at 24, 25; CARB Staff Report on GM Request at 5.

[82] *See* Tr. at 40–41 (MVMA); General Motors [Waiver Hearing] Statement, dated June 7, 1983 at 4; and American Motors Corporation [Waiver Hearing] Statement, dated June 7, 1983 at 2.

[83] *See* note 56, *supra*. Additionally, the allegation made by GM that CARB failed to properly account for the higher particulate emissions typical of "heavier weight vehicles such as trucks," General Motors [Waiver Hearing] Statement at 4, even if true, is offset by the fact that CARB has less stringent NO_x standards for LDTs and MDVs of 4000–5,999 lbs, and still less stringent NO_x standards for LDTs and MDVs of 6,000–8,500 lbs. *See* CARB Comment at 33. Of course, it is understood that generally the less stringent the NO_x standard, the easier it is to control particulates.

[84] CARB recently approved regulations that authorize the sale of some 1985 model year PCs, LDTs and MDVs that are certified to the Federal, but not the California particulate standards, in order to enhance California diesel model availability. *See* "Notice of Public Hearing * * * Regarding Trading of Particulate Emissions for Certification of Federally Certified Light-Duty Motor Vehicles for Sale in California," dated October 18, 1983 (and accompanying summary and staff report) and "Calif[ornia] eases rules on sale of '85 diesels," *Automotive News*, December 26, 1983, at 2. These regulations, which supplement parallel existing regulations for the sale of PCs, LDTs, and MDVs which meet Federal, but not California, NO_x, HC and CO standard, should further lessen any model availability problem faced by the manufacturers.

year prior to their introduction nationally. In so doing, the Administrator noted that this "phase-in" of technology serves the purposes of the Act:

> It is my judgment that [this approach] best serves the total public interest and the mandate of the statute. It promotes continued momentum toward installation of control systems meeting the statutory standards, while minimizing risks incident to national introduction of a new technology. This option also offers the opportunity to gain experience with production of catalyst systems for a full range of automobiles by requiring catalysts of a portion of each model introduced by each manufacturer in the State of California.

38 FR 10317, 10319 (April 26, 1973).

This rationale is particularly appropriate in this case, where a new emission control system—the trap-oxidizer—can be phased-in in California, which will help ensure successful implementation on a nationwide basis the following year.[88]

Furthermore, even if traps were unavailable for the 1986 model year in the California market, a number of diesel engine families would remain available in California, with present technology. It is apparent from the CARB certification data that at least three manufacturers—Volkswagen, Toyo Kogyo and Ford—have at this early date demonstrated their ability to meet the 0.2 g/mi particulate standard in conjunction with the applicable NO_x standards without traps.[89] Several additional manufacturers are very close to the standard without traps, and presumably will have an economic incentive to perfect their technology so that they can meet the standard without the use of traps.[90] Thus, even if CARB was overly optimistic in its leadtime assessment, some diesel vehicles will be available for the 1986 model year.

It is also apparent that if traps are not available in California in 1986, the majority of currently available diesel vehicles will probably be eliminated from that market for that year. Nonetheless, I cannot find that California's 1986 particulate standard is inconsistent with section 202.

First, California has determined that traps will be available for the 1986 model year. Although the manufacturers dispute this prediction, it has a substantial basis and does not conflict with the federal leadtime determination. As noted above, the EPA leadtime determination did not address whether the traps could be introduced earlier in the limited California market. Moreover, the risk of traps not being available for the 1986 model year could be lessend to the extent the manufacturers are willing to introduce diesel-powered vehicles later in the calendar year, for example, in February 1986 rather than September 1985.[91]

Second, if California's leadtime projections later prove to have been overly optimistic, the manufacturers can ask that California reconsider its standard. If they are unsuccessful in securing such relief, the manufacturers could petition EPA to reconsider the waiver. Given the leadtime remaining, the avenues of potential relief provide a practical safety valve that underscores the reasonableness of California's standards. *Cf. Natural Resources Defense Council* v. *EPA*, 655 F.2d 318, 329–332 (D.C. Cir. 1981), *cert. denied*, 102 S.Ct. 552 (1981).

Third, in assessing the risk of whether traps will be available for timely introduction in 1986, I must bear in mind that light-duty diesel penetration appears unlikely to exceed ten percent of the California market, in the near term at least, which itself is only slightly more than ten percent of the federal market for all light-duty vehicles and light-duty trucks. This small segment of the total U.S. light-duty market (approximately one percent or less), even if it were faced with temporary elimination, is not so significant as to evoke the concerns raised in *International Harvester* of an Agency decision "allowing companies to produce cars but at a significantly reduced level of output." *International Harvester, supra*, 478 F.2d at 641. Moreover, if an inaccurate assessment of feasibility in California resulted in elimination of some or all diesel vehicles, potential diesel buyers would likely purchase the remaining diesel-powered or fuel efficient gasoline-powered models, and thus it would probably not significantly affect the potential level of output of vehicles in the aggregate.

Fourth, even if traps are not available in 1986, a number of diesel-powered vehicles will apparently be available. To the extent that diesel technology is desired by consumers, the innovative manufacturers of these vehicles stand to be advantaged and the industry's level of technology will be encouraged to rise. "Where regulatory requirements for emission control challenge conventional technology to its limits, the marketplace will in my judgement provide a strong lever for causing a shift into any superior technology." 38 FR 10317, 10319 (April 26, 1973).

Fifth, the manufacturers have failed to demonstrate that imposition of the 0.2 g/mi standard in 1986 will be technologicially infeasible on "cost of compliance within available leadtime" grounds. GM, for example, asserts that the cost of the trapoxidizer is "prohibitively excessive" and "could have dire consequences on the sales of diesels."[92] However, this is an insufficient showing. EPA has already found the cost of trap technology, assuming nationwide implementation in the 1987 model year, to be acceptable under section 202(a) and no data have been presented which would indicate that implementation of traps in 1986 in California would cause the cost of compliance to increase.[93]

Finally, although it is unnecessary to reach this conclusion to grant the waiver, it is arguable that "basic demand for new passenger automobiles," *International Harvester, supra*, 478 F.2d at 640, LDTs and MDVs will be met even if traps are not

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[88] EPA has consistently recognized Congress' intent that California pioneer efforts in automotive emission control:

> [T]here is a well-established pattern that emission control advances have been phased in through use in California before their use nationwide. This pattern grew out of early recognition that auto-caused air pollution problems are unusually serious in California. In response to the need to control auto pollution, California led the nation in development of regulations to require control of emissions. This unique leadership was recognized by Congress in enacting federal air pollution legislation both in 1967 and 1970 by providing a special provision to permit California to continue to impose more stringent emission control requirements than applicable in the rest of the nation. The experience of Federal and State officials as well as the industry itself in meeting such standards for California will facilitate an orderly implementation of the more stringent, catalyst-forcing standards for California in this case. [38 FR 10317, 10324.]

See also, MEMA, supra, 627 F.2d at 1108–1111, reviewing applicable legislative history and concluding:

> [T]hat Congress intended the State to continue and expand its pioneering efforts at adopting and enforcing motor vehicle emission standards different from and in large measure more advanced than the corresponding federal program; in short, to act as a kind of laboratory for innovation. [*Id.* at 1111.]

[89] CARB Supplement at 24; CARB Staff Report on GM Petition at 5. Toyo Kogyo has engine families available for both PCs and LDTs.

[90] CARB Supplement at 24, 25; 1984 California certification data.

[91] The nationally-based EPA projection of trap-oxidizer availability for production vehicles is "sometime between the fall of 1985 and the summer of 1986." 49 FR 3010, 3013, *supra*. Even on the basis of the less optimistic federal projection there is a good possibility that a moderately delayed introduction of some diesel-powered vehicles requiring traps could be made in the 1986 model year.

[92] GM [Waiver Hearing] Statement at 7.

[93] *See MEMA, supra*, 627 F.2d at 1118 ("Section 202's cost of compliance consideration * * * relates to the *timing* of a particular emission control regulation [emphasis in original].") *See also* disucssion at Tr. 108–111.

available.[94] Gasoline-powered vehicles are, notwithstanding the current fuel economy superiority generally provided by diesels, substantially similar in size and function to diesel-powered vehicles. Because gasoline powered PCs, LDTs and MDVs encompassing virtually all sizes, functions and price ranges would still be available in California, the California emission standards appear feasible.

3. *The standard for 1989 and subsequent model years*—CARB has set a .08 g/mi particulate standard for the 1989 and subsequent model years. In support of its conclusion that such a standard is feasible, CARB has submitted evidence that some existing traps have demonstrated collection efficiencies of 90% which, when acting upon an "engine out" particulate level of .35 g/mi (approximately the mean 1982 certification level), would produce particulate levels of .035 g/mi.[95] In recognition of testing and production variability, CARB set the standard at a somewhat higher level.[96]

Numerous manufacturers contend that there is no technological basis for believing the .08 g/mi standard can be met.[97] Additionally, they assert that the development of "effective regeneration systems" is necessary to meet that standard.[98] Finally, some manufacturers argue that consideration of a waiver for this standard is premature.[99]

Reviewing the record of this proceeding, it is clear that the manufacturers have not presented evidence rebutting CARB's evidence—including a 50,000 mile test on a 1980 Mercedes 300 SD with particulate levels under 0.08 g/mi and NO_x levels below 1.0 g/mi—demonstrating that the necessary collection efficiencies are possible.[100] Further, the manufacturers have not demonstrated how, if at all, development of a commercially available regeneration system will be made more difficult by reason of the more stringent standard. On the other hand, EPA's own technological assessment predicts that regeneration systems will be commercially available on a nationwide basis no later than the 1987 model year.[101]

The Manufacturers of Emission Controls Association (MECA) also forecasts the availability of the requisite technology for meeting the .08 g/mi standard in 1989.[102] MECA also is concerned that progress in meeting the .08 g/mi standard may be impeded if the waiver were not granted: "If our members and others do not have a specific target at which to direct their efforts the incentive will not be present to undertake the necessary development and production efforts."[103]

With the possible exception of an acceptable regeneration system, the technology to meet a .08 g/mi standard appears to currently exist. Given the significant lead time,[104] and that the only major remaining technological step—the regeneration system—is nearing its final stages, I cannot find that the .08 g/mi standard is inconsistent with section 202(a). *Cf. Natural Resources Defense Council* v. *EPA, supra*, 655 F.2d at 328–336.[105]

V. Decision

Based upon the above discussion and findings, I hereby waive the application of section 209(a) to the State of California with respect to § 1960.1 of Title 13, California Administrative Code, and "California Exhaust Emission Standards and Test Procedures for 1981 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted November 23, 1976, as amended August 26, 1982.

Dated: August 27, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-11917 Filed 5-2-84; 8:45 am]

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[94] CARB strongly asserts this position. *See, e.g.*, Tr. at 10–11.

[95] CARB Comment at 28–29.

[96] *Id.*

[97] *See, e.g.*, AIA/MVMA Comment at 23 and DB Comment at 11.

[98] AIA/MVMA Comment at 23.

[99] *See, e.g.*, Ford letter, dated June 6, 1983, at 3.

[100] CARB Comment at 29 (reviewing results of Society of American Engineers (SAE) Paper #830084). CARB also cites another testing program designed to consider the feasibility of the .08 g/mi standard, which found a mean particulate emission rate of 0.04 g/mi for the 2,000 miles the vehicle was tested. *Id.*

[101] *See* 49 FR 3010 *supra.*

[102] Letter from Bruce I. Bertelsen, Executive Director, MECA, to William Heglund, EPA, dated July 25, 1983, at 2.

[103] *Id.*

[104] As I indicated with respect to the 0.2 g/mi standard, supra at pages 40–41, if CARB's assessment of the availability of the necessary technology is too optimistic, the manufacturers would be able to petition CARB again for reconsideration of the .08 standard, or to petition EPA for reconsideration of its decision to grant this waiver.

[105] In *NRDC*, the court considered the validity of EPA's regulation, which was envisioned as generally requiring trap-oxidizers on light-duty vehicles, in light of the arguments of the vehicle manufacturers that EPA incorrectly assessed the period of time necessary to permit developmental application of the requisite technology. The Court upheld EPA's 1980 prediction that traps would be available in 1985 and concluded:

> Given this time frame, we feel that there is substantial room for deference to the EPA's expertise in projecting the likely course of development. The essential question in this case is the pace of that development, and absent a revolution in the study of industry, defense of such a projection can never possess the inescapable logic of a mathematical deduction. We think that the EPA will have demonstrated the reasonableness of its basis for prediction if it answers any theoretical objections to the trap-oxidizer method, identifies the major steps necessary in refinement of the device, and offers plausible reasons for believing that each of those steps can be completed in the time available. If the agency can make this showing, then we cannot say that its determination was the result of crystal ball inquiry, or that it neglected its duty of reasoned decisionmaking. [655 F.2d at 332–333.]

The manufacturers have not shown that the trap-oxidizer technology is unavailable, particularly in view of current existence of all of the necessary technology other than a fully perfected regeneration system, the abundant leadtime available, and the opportunity to petition California or EPA later if current projections prove to be overly optimistic.

[OPTS-51514; TSH-FRL 2565-4]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84–9956 beginning on page 14802 in the issue of Friday, April 13, 1984, make the following corrections.

On page 14803, first column, PMN–548, third line from the bottom, *"Disposal.*0.2" should read *"Disposal.* 0.2"; third column, PMN 84–557, second line, "alkan" should read "alkane"; PMN84–558, second line, "Darbocylated" should read "Carboxylated".

BILLING CODE 1505-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-361]

American Savings Bank, FSB; New York, New York; Final Action Approval of Conversion Application

Notice is hereby given that on March 22, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of American Savings Bank, FSB, New York, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

Dated: April 27, 1984.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-11931 Filed 5-2-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-359]

Capitol Federal Savings & Loan Association of Denver, Denver, Colo.; Final Action Approval of Conversion Application

Notice is hereby given that on March 23, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Capitol Federal Savings and Loan Association of Denver, Denver,

Colorado, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, P.O. Box 176, Topeka, Kansas 66601.

Dated: April 27, 1984.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-11933 Filed 5-2-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-362]

Home Federal Bank of Florida, F.S.B., St. Petersburg, Fla.; Final Action Approval of Conversion Application

Notice is hereby given that on March 21, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Bank, F.S.B., St. Petersburg, Fla., for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

Dated: April 27, 1984.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-11930 Filed 5-2-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-360]

United Savings and Loan Association; Lebanon, Mo.; Final Action Approval of Conversion Application

Notice is hereby given that on March 30, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of United Savings and Loan Association, Lebanon, Mo., for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Des Moines, 907 Walnut Street, Des Moines, Iowa 50309.

Dated: April 27, 1984.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-11932 Filed 5-2-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Beverly National Corp.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 25, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Beverly National Corporation,* Beverly, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of The Beverly National Bank, Beverly, Massachusetts.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Consolidated Banc Shares, Inc.,* Clarksburg, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Lowndes Bank, Clarksburg, West Virginia.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Assumption Bancshares, Inc.,* Napoleanville, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Assumption Bank & Trust Company, Napoleonville, Louisiana.

2. *Hancock Holding Company,* Gulfport, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Hancock Bank, Gulfport, Mississippi.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Mid-Continent Financial Services, Inc.,* Minneapolis, Minnesota; to become a bank holding company by acquiring 96.6 percent of the voting shares of State Bank of Edgerton, Edgerton, Minnesota.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Richland State Bancorp, Inc.,* Rayville, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Richland State Bank, Rayville, Louisiana.

Board of Governors of the Federal Reserve System, April 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-11887 Filed 5-2-84; 8:45 am]

BILLING CODE 6210-01-M

Irving Bank Corp.; Applications To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed applications under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and section 255.21(a) of Regulation Y (49 FR 794), to engage *de novo* throught national bank subsidiaries in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiaries will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (Press Release of March 23, 1984). Although the Board is publishing notice of these applications, under established Board policy the record of the applications will not be